IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/06/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.462 of 1997

Johnson ... Appellant /
Accused.

-Vs-

State of Tamil Nadu, rep.
by Inspector of Police,
V.1 Police Station, Madras. ... Respondent.

Criminal Appeal against the judgment dated 26.09.1996 made in
S.C. No.53 of 1996 on the file of III Additional Sessions Judge, Madras.

!For appellant : Mr.V.K.Sathiyamurthy, for
M/s.C.Sreedharan and
C.Rajan.

^For respondent : Mr. A.N.Thambidurai,
Government Advocate.
(Crl. Side)

:J U D G M E N T

Appellant is the accused in S.C.No.53 of 1996. By the
Judgment dated 26.09.1996, the III Additional Sessions Judge has convicted the Appellant / Accused under Sec.498-A I.P.C. and sentenced him to undergo Rigorous Imprisonment for three years and also imposed a fine of Rs.5,000/-. The Appellant / Accused was acquitted for the charge under Sec.304-B I.P.C.

2. Deceased Ranjani is the daughter of P.W.1 - George and
P.W.2 - Mary George. P.W.1 is working in E.S.I. Hospital, Ayanavaram as XRay Technician. His wife P.W.2 is running a Garment Shop. They are Malayalee Christians. The Accused got acquainted with the family of Ranjani, who were running the Garment Shop. The accused had fallen in love with Ranjani and married her. The marriage was a love marriage, which was to the disliking of the family members of Ranjani. After marriage, the accused and deceased Ranjani were living separately. However, they were frequently visiting the house of P.Ws.1 and 2.

3. Case of prosecution is that while deceased Ranjani visited
the house of her parents, she informed her parents that the accused was

treating her cruelly, demanding for money. Once, at the instance of the accused, she asked for money and P.W.1 gave Rs.5,000/-. On another occasion, P.W.2 - mother of the deceased gave her Rs.3,000/-. Ranjani told her parents that the accused was treating her cruelly and beating her stating that it was a love marriage and that no Stridhana was given to her at the time of marriage. During the lawful wedlock, Ranjani gave birth to a female child Jenifer.

4. Ranjani was working in a Company and she was earning Rs.2,000/- per month. The accused had no permanent job. Till the death of Ranjani, P.W.1 was supporting them by paying Rs.500 - Rs.600 every month. On 23.10.1992, Ranjani came to the house of P.W.1 and told her sister that there was problem in her house. On 24.10.1992, Ranjani poured kerosene on herself and set fire to herself. She was taken to Kilpauk Medical College Hospital, where she was admitted at 11.25 p.m. She sustained burn injuries over the

scalp, face, neck, chest, abdomen, back both upper and lower legs. While trying to rescue his wife, the accused also sustained burn injuries over both his hands. He was also treated for burn injuries over both hands.

5. Registration of case and Investigation. On receipt of intimation from the hospital, P.W.8 - Sub Inspector of Police, Villiwalkam went to the Hospital. Ranjani was not in a position to talk. Statement of the accused (Ex.P.11) was recorded. On the basis of Ex.P.11, a case was registered in Crime No.2168 of 1992 under Sec.309 I.P.C. under Ex.P.12 - First Information Report. P.W.8 sent a requisition (Ex.P.17) to the Magistrate for recording the Dying Declaration of Ranjani and had taken up the initial investigation. He visited the scene of occurrence - the house in Lakshmipuram, where the accused and deceased Ranjani were residing. Ex.P.14 is the Observation Mahazar and Ex.P.15 is the Rough Plan. Burnt objects - M.Os.1 to 4 were seized under Ex.P.16 - Seizure Mahazar.

6. On 25.10.1992 - 6.45 a.m., Ranjani succumbed to burn injuries. The case was altered from Sec.309 I.P.C. to under Sec.174 Crl.P.C. Since Ranjani died within seven years of marriage, the case was sent to Assistant Commissioner of Police for further investigation.

7. Pursuant to the requisition from the Assistant Commissioner, P.W.7 - Tahsildar, Purasaiwalkam - Perambur had taken up the initial investigation. Inquest was held on the body of deceased Ranjani. The accused, P.Ws.1 and 2 and other witnesses were examined and their statements were recorded. Ex.P.7 is the Inquest Report.

8. P.W.10 - Assistant Commissioner of Police has altered the First Information Report from Sec.174 Crl.P.C. to Ss.304-B and 498-A I.P. C. The accused was arrested on 15.11.1992. On completion of the formalities of investigation, P.W.11 - Assistant Commissioner of Police filed the charge sheet against the accused for the offences punishable under Ss.498-A and 304-B I.P.C.

9. To substantiate the charges against the accused, prosecution has examined P.Ws.1 to 11. Exs.P.1 to P.18 were marked; M.Os.1 to

4 were produced. The accused was questioned about the incriminating evidence and circumstances under Sec.313 Crl.P.C. Denying all of them, the accused had stated that he and his wife Ranjani lived happily and that there was no Demand of Dowry by him and that a false case is foisted against him at the instance of his in-laws, since he refused to hand over the child to his in-laws.

10. Upon consideration of the evidence, the trial Court accepted the evidence of P.Ws.1 and 3 to conclude that there was Demand of Dowry and that Ranjani was subjected to cruelty. Finding that the essential ingredients of Sec.498-A I.P.C. are proved, the trial Court convicted the accused under Sec.498-A I.P.C. However, the trial Court acquitted the accused for the offence of Dowry Death under Sec.304-B I. P.C.

11. Aggrieved over the conviction, the Appellant / Accused has preferred this appeal. Assailing the findings of conviction, the learned counsel for the Appellant / Accused has taken me through the evidence in support of his contention that at the earliest point of time, there was no Demand of Dowry and that the deceased Ranjani was not subjected to cruelty, which aspect was not properly appreciated by the trial Court. It is the further contention that the non-production of the Dying Declaration and non-examination of independent witnesses from Lakshmipuram area, where the Appellant / Accused and the deceased were living, seriously undermines the prosecution case. The main contention urged by the Appellant / Accused is that there was absolutely no basis for alteration of the case from Sec.174 Crl.P.C. to Sec.498 -A I.P.C. on 15.11.1992. When the alteration of the First Information Report and charges levelled against the Appellant / Accused suffer from want of evidence, the trial Court without properly appreciating that position, erred in convicting the Appellant / Accused under Sec.4 98-A I.P.C., is the main point urged by the Appellant / Accused.

12. Taking me through the evidence, the learned Government Advocate Mr.A.N.Thambidurai (Crl.Side) repelled the arguments of the Appellant / Accused contending that the evidence of P.Ws.1 to 3 - Father, Mother and Sister of the deceased Ranjani sufficiently establishes the Demand of Dowry and that the trial Court has rightly convicted the accused on that basis and that there is no reason warranting interference. The learned Government Advocate has further submitted that the statements of P.Ws.1 and 2 before the Tahsildar at the earlier stages of investigation would not in any way affect their subsequent versions before the Investigating Agency and in the Court and the learned Government Advocate prays to sustain the conviction.

13. There is no denying that Ranjani committed self-immolation on 24.10.1992. Terming it as Dowry Death, the Appellant / Accused was charge sheeted for the offence punishable under Sec.304-B I.P.C. and the trial Court acquitted him from that Section; but convicted him under Sec.498-A I.P.C.

14. The short point that arises for consideration is, whether prosecution has convincingly established that deceased Ranjani was subjected to Dowry Harassment within the meaning of Sec.498-A I.P.C. ?

15. For better appreciation of the contentious points urged, few aspects that have to be borne in mind are to be referred to. The expression ' cruelty ' postulates such a treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband will be harmful and injurious to her life. Therefore, to decide the question of cruelty, the relevant factors are the matrimonial relationship between the husband and wife, their cultural status, temperament, state of health, their interaction in this daily life, which dominate the aspect of cruelty. It is to be noted that the marriage of Ranjani with the Appellant / Accused was a love marriage. Despite the initial opposition from the family, they were running normal family life for about six years. Out of lawful wedlock, Ranjani has also given birth to a girl child Jenifer (who is now said to be with the Appellant / Accused).

16. The earliest statement - Ex.P.11 was recorded from the Appellant / Accused. From Ex.P.11 - Statement, it is seen that there was a preluding petty quarrel prior to the occurrence. On the night of 23.10.1992, Ranjani returned home late, which was questioned by the accused, which resulted in a petty quarrel between them. On 24.10.1992, Ranjani asked the accused to take her to a Cinema, which was declined by the accused. In continuation thereof, Ranjani is alleged to have poured kerosene on herself and set fire. Thus the entire occurrence seems to be due to the petty quarrel arising between the spouses. It is also to be noted that in the attempt to save Ranjani, the accused also sustained burn injuries on his hands.

17. Case of prosecution is that Ranjani was subjected to cruelty in Demand of Dowry. To prove the same, prosecution mainly relies upon the evidence of P.Ws.1 and 2, father and mother and P.W.3 - sister of Ranjani. Whether the evidence of P.Ws.1 and 2 that deceased Ranjani underwent sufferings at the hands of the accused is acceptable is the main point to be considered. In view of the close relationship of the parties and the love and affection for the deceased Ranjani, P. Ws.1 and 2 would naturally have a psychological hatred against the Appellant / Accused. They would be guided by the spirit of ill-will against him. In fact, in his earlier complaint to the District Collector - Ex.P.2 (dated 27.10.1992), P.W.1 - George has gone to the extent of making the allegation of foul-play stating that the accused might be responsible for causing the homicidal death of Ranjani and expressed his doubts that it would not be a case of suicide and he further expressed doubts against his son-in-law. In that factual backdrop, evidence of the interested witnesses viz. P.Ws.1 and 2 is to be viewed cautiously and carefully assessed.

18. That P.Ws.1 and 2 are guided by such vengeful spirit is clear by more than one aspect. Marriage of the accused and deceased Ranjani in 1986 was a love marriage, which was to the disliking of the family members. But, in their evidence, P.Ws.1 and 2 have made accusation against their Son-in-law " mtUld; ngrp mth; kdij bfLj;J vd; kfis vjphp jpUkzk; bra;J bfhz;lhh; ". From the evidence of P.Ws.1 and 2, it is obvious that they are inimical towards the accused and are highly interested in securing his conviction. The trial Court has not taken note of these aspects and has not adopted a cautious approach in assessing the evidence of P.Ws.1 and 2.

19. The evidence of P.Ws.1 and 2 that there was Demand of Dowry is unsupported by their earlier version. On 25.10.1992, the case was registered in Crime No.2168 of 1992 under Sec.309 I.P.C. - attempt to commit suicide. At that time, P.Ws.1 and 2 have not raised any accusation of Demand of Dowry against the accused. In fact, P.W.1 and brother of Ranjani visited Villiwalkam Police Station and when enquired by P.W.8 - S.I. of Police, they have stated that they were not in a position to give any statement. This is clear from the following version of P.W.8:-

" md;iwa jpdk; tpoaw;fhiy 3 kzp mstpy; kUj;Jtkidf;F u";rpdpapd; jhahUk; jk;gpa[k; te;jth;fs; ehd; tprhhpf;f mth;fs; ,UtUk; mg;nghJ thf; FK:yk; bfhLf;Fk; epiyapy; ,y;iy vd brhy;yp brd;Wtpl;ldh;"

Had there been any genuine grievance of dowry demand and harassment, definitely P.W.1 would have made a complaint to P.W.8 - S.I. of Police at that early point of time. But, that was not to be so.

20. After Ranjani succumbed to burn injuries on 25.10.1992, the case was altered into Sec.174 Crl.P.C. for suspicious death. Even at that point of time, P.Ws.1 and 2 have not raised any accusation finger against the accused that there was Demand of Dowry and they have made no endeavour to alter the case.

21. P.Ws.1 and 2 further had another opportunity when P.W.7 - Tahsildar had conducted the inquest on the body of deceased Ranjani as to the cause of death. Both P.Ws.1 and 2 gave statements before P.W.7. But they have not made any allegation of Demand of Dowry. In fact, in Ex.P.1 - Complaint, P.W.1 has stated " ,we;j vd; kfspd; ,wg;gpy; vt;tpj tujl;riz bfhLika[k; ,y;iy ". The stat ements by P.Ws.1 and 2 before P.W.7 - Tahsildar are their earlier versions. The fact that there was no allegation of Demand of Dowry in their earlier version before P.W.7 - Tahsildar is relevant and much weight is to be attached to such non-mention of Demand of Dowry. It is not as if P.Ws.1 and 2 are not worldly-wise. P.W.1 was employed in E.S.I. Hospital as XRay Technician. P.W.2 was running a Garment Shop. Both of them are knowledgeable persons. They must have been conscious of their versions while giving statement to P.W.7 - Tahsildar. Their conduct in not mentioning about the Demand of Dowry in their earlier statements has a weakening effect on the prosecution case. The conduct of P.Ws.1 and 2 is incompatible with human conduct. The case of Demand of Dowry and other allegations expressing doubt on the death of Ranjani were introduced for the first time on 27.10.1992 when P.W.1 - George sent the complaint - Ex.P.2 to the District Collector. As noted earlier, in Ex.P.2 - Complaint, P.W.1 has suspected foul-play in the death of his daughter and stated that Ranjani must have been murdered and P.W.1 has sought for a detailed and thorough investigation as to the cause of death of Ranjani. This shows the vengeful mind of P.W.1 towards the accused, whom he suspected to be responsible for the death of his daughter.

22. Case of prosecution suffers for want of evidence even on factual aspects. In their evidence, P.Ws.1 and 2 have stated that they have given money to their daughter Ranjani on two occasions, i.e. Rs.5,000/- and Rs.3,000/-. There is no convincing evidence as to when those amounts were

paid and whether there was any Demand of Dowry and that the amounts were paid pursuant to the demand. Equally, evidence is wanting on the aspect of cruelty, (if any), that Ranjani was subjected to.

23. P.Ws.1 to 3 have stated that the accused was subjecting Ranjani to cruelty and that P.W.1 was giving her Rs.500 - Rs.600 per month. The couple were living separately. Ranjani was employed in ' Sumeet Company'. The accused was employed in another private company. Perhaps to support the family, P.W.1, who was employed in E.S.I. Hospital had been making some small contribution to the family of Ranjani. But such contributions cannot be taken to be proof for Demand of Dowry and harassment. The tenor of evidence of P.Ws.1 and 2 only shows that P.W.1 voluntarily made such contributions to support the family of his daughter. Such voluntary contributions cannot be said to be made pursuant to the Demand of Dowry.

24. Prosecution has examined P.W.4 - Thangamma to support its version that the Appellant / Accused was frequently quarrelling with Ranjani and that even one year prior to the occurrence, the Appellant / Accused quarrelled with Ranjani in front of the house of P.W.1. P.W.4 is residing in Ayanavaram E.S.I. Quarters. She is known to the family of P.W.1. According to her, Appellant / Accused was frequently quarrelling with Ranjani. She has recalled an occurrence that about one year prior to the occurrence, accused quarrelled with Ranjani in front of the house of P.W.1 at Ayanavaram. This specific incident recalled by P.W.4 is not proved to be due to Demand of Dowry or cruelty. P.W.4 is not a natural witness. She is the resident of Ayanavaram. The accused and the deceased were living in Lakshmipuram. P.W.4 would not have directly known about the domestic quarrel between the accused and the deceased, much less that those quarrels related to the Demand of Dowry and cruelty. As rightly pointed out by the learned counsel for the Appellant / Accused the witness from Lakshmipuram would have been the natural and appropriate witness to speak about the family life of the accused and the deceased. Non-examination of any neighbouring witness from Lakshmipuram seriously affects the prosecution case.

25. From the materials on record, it is seen that P.W.8 - S.I. of Police has given the requisition to the Court for recording the Dying Declaration of Ranjani. That Dying Declaration is not produced by the prosecution. The fact that the Dying Declaration is not produced before the Court is yet another circumstance throwing doubts on the prosecution case.

26. Prosecution has not established the essential ingredients of Sec.498-A I.P.C. to substantiate the charge of Demand of Dowry and that the deceased Ranjani was subjected to cruelty. No doubt, death by self-immolation of Ranjani is painful. The couple might have been quarrelsome; that may be the wear and tear in any normal matrimonial life. Every day domestic quarrel between the couple cannot conclusively establish the Demand of Dowry. Like in any other case, the prosecution has to prove that the deceased was subjected to cruelty or harassment in Demand of Dowry. There is no cogent and convincing evidence to substantiate the charge under Sec.498-A I.P.C. The trial Court has not adopted a cautious approach in analysing the evidence of P.Ws.1 and 2 and erred in convicting the Appellant /

Accused under Sec.498 -A I.P.C. and the conviction cannot be sustained.

27. Therefore, the Judgment of the III Additional Sessions Judge in S.C.No.53 of 1996 (dated: 29.06.1996) is set aside and this appeal is allowed. The Appellant / Accused is acquitted of the charge under Sec.498-A I.P.C. The fine amount of Rs.5,000/- paid by the Appellant / Accused is ordered to be refunded to him. The bail bond executed by him is also ordered to be cancelled.

Index:Yes
Internet:Yes

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To

1. The III Additional Sessions Judge,
Chennai.

2. The III Additional Sessions Judge,
Chennai. Through

The Principal Sessions Judge,
Chennai.

3. The Superintendent,
Central Prison, Vellore.

4. The Inspector of Police,
Villiwalkam Police Station,
Chennai.

5. The Public Prosecutor,
High Court, Madras.

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